

of this Act or any regulation promulgated pursuant to this Act or any term or condition of any permit issued under this Act; or

(2) against the Secretary or the Secretary of Agriculture where there is alleged a failure of such Secretary to perform any act or duty under this Act, or to promulgate any regulation under this Act, which is not within the discretion of the Secretary concerned.

The United States district courts shall have jurisdiction over actions brought under this section, without regard to the amount in controversy or the citizenship of the parties, including actions brought to apply any civil penalty under this Act. The district courts of the United States shall have jurisdiction to compel agency action unreasonably delayed, except that an action to compel agency action reviewable under section 505 may only be filed in a United States district court within the circuit in which such action would be reviewable under section 505.

(b) **EXCEPTIONS.**—(1) No action may be commenced under subsection (a) before the end of the 60-day period beginning on the date the plaintiff has given notice in writing of such alleged violation to the the alleged violator and the Secretary, or for National Forest System lands the Secretary of Agriculture, except that any such action may be brought immediately after such notification if the violation complained of constitutes an imminent threat to the environment or to the health or safety of the public.

(2) No action may be brought against any person other than the Secretary or the Secretary of Agriculture under subsection (a)(1) if such Secretary has commenced and is diligently prosecuting a civil or criminal action in a court of the United States to require compliance.

(3) No action may be commenced under paragraph (2) of subsection (a) against either Secretary to review any rule promulgated by, or to any permit issued or denied by such Secretary if such rule or permit issuance or denial is judicially reviewable under section 505 or under any other provision of law at any time after such promulgation, issuance, or denial is final.

(c) **VENUE.**—Venue of all actions brought under this section shall be determined in accordance with section 1391 of title 28, United States Code.

(d) **COSTS.**—The court, in issuing any final order in any action brought pursuant to this section may award costs of litigation (including attorney and expert witness fees) to any party whenever the court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(e) **SAVINGS CLAUSE.**—Nothing in this section shall restrict any right which any person (or class of persons) may have under chapter 7 of title 5, United States Code, under this section, or under any other statute or common law to bring an action to seek any relief against the Secretary or the Secretary of Agriculture or against any other person, including any action for any violation of this Act or of any regulation or permit issued under this Act or for any failure to act as required by law. Nothing in this section shall affect the jurisdiction of any court under any provision of title 28, United States Code, including any action for any violation of this Act or of any regulation or permit issued under this Act or for any failure to act as required by law.

#### **SEC. 505. ADMINISTRATIVE AND JUDICIAL REVIEW.**

(a) **REVIEW BY SECRETARY.**—(1)(A) Any person issued a notice of violation or cessation order under section 506, or any person having an interest which is or may be adversely affected by such notice or order, may apply to the Secretary, or for National Forest System lands the Secretary of Agriculture, for review of the notice or order within 30 days after receipt thereof, or

as the case may be, within 30 days after such notice or order is modified, vacated, or terminated.

(B) Any person who is subject to a penalty assessed under section 506 may apply to the Secretary concerned for review of the assessment within 45 days of notification of such penalty.

(C) Any person may apply to such Secretary for review of the decision within 30 days after it is made.

(D) Pending a review by the Secretary or resolution of an administrative appeal, final decisions (except enforcement actions under section 506) shall be stayed.

(2) The Secretary concerned shall provide an opportunity for a public hearing at the request of any party to the proceeding as specified in paragraph (1). The filing of an application for review under this subsection shall not operate as a stay of any order or notice issued under section 506.

(3) For any review proceeding under this subsection, the Secretary concerned shall make findings of fact and shall issue a written decision incorporating therein an order vacating, affirming, modifying, or terminating the notice, order, or decision, or with respect to an assessment, the amount of penalty that is warranted. Where the application for review concerns a cessation order issued under section 506 the Secretary concerned shall issue the written decision within 30 days of the receipt of the application for review or within 30 days after the conclusion of any hearing referred to in paragraph (2), whichever is later, unless temporary relief has been granted by the Secretary concerned under paragraph (4).

(4) Pending completion of any review proceedings under this subsection, the applicant may file with the Secretary, or for National Forest System lands the Secretary of Agriculture, a written request that the Secretary grant temporary relief from any order issued under section 506 together with a detailed statement giving reasons for such relief. The Secretary concerned shall expeditiously issue an order or decision granting or denying such relief. The Secretary concerned may grant such relief under such conditions as he or she may prescribe only if such relief shall not adversely affect the health or safety of the public or cause imminent environmental harm to land, air, or water resources.

(5) The availability of review under this subsection shall not be construed to limit the operation of rights under section 504 (relating to citizen suits).

(b) **JUDICIAL REVIEW.**—(1) Any final action by the Secretaries of the Interior and Agriculture in promulgating regulations to implement this Act, or any other final actions constituting rule-making to implement this Act, shall be subject to judicial review only in the United States Court of Appeals for the District of Columbia. Any action subject to judicial review under this subsection shall be affirmed unless the court concludes that such action is arbitrary, capricious, or otherwise inconsistent with law. A petition for review of any action subject to judicial review under this subsection shall be filed within 60 days from the date of such action, or after such date if the petition is based solely on grounds arising after the 60th day. Any such petition may be made by any person who commented or otherwise participated in the rule-making or any person who may be adversely affected by the action of the Secretaries.

(2) Final agency action under this subsection, including such final action on those matters described under subsection (a), shall be subject to judicial review in accordance with paragraph (4) and pursuant to section 1391 of title 28, United States Code, on or before 60 days from the date of such final action. Any action subject to judicial review under this subsection shall be affirmed unless the court concludes that such action is arbitrary, capricious, or otherwise inconsistent with law.

(3) The availability of judicial review established in this subsection shall not be construed to limit the operations of rights under section 504 (relating to citizen suits).

(4) The court shall hear any petition or complaint filed under this subsection solely on the record made before the Secretary or Secretaries concerned. The court may affirm or vacate any order or decision or may remand the proceedings to the Secretary or Secretaries for such further action as it may direct.

(5) The commencement of a proceeding under this section shall not, unless specifically ordered by the court, operate as a stay of the action, order, or decision of the Secretary or Secretaries concerned.

(c) **COSTS.**—Whenever a proceeding occurs under subsection (a) or (b), at the request of any person, a sum equal to the aggregate amount of all costs and expenses (including attorney fees) as determined by the Secretary or Secretaries concerned or the court to have been reasonably incurred by such person for or in connection with participation in such proceedings, including any judicial review of the proceeding, may be assessed against either party as the court, in the case of judicial review, or the Secretary or Secretaries concerned in the case of administrative proceedings, deems proper if it is determined that such party prevailed in whole or in part, achieving some success on the merits, and that such party made a substantial contribution to a full and fair determination of the issues.

#### **SEC. 506. ENFORCEMENT.**

(a) **ORDERS.**—(1) If the Secretary, or for National Forest System lands the Secretary of Agriculture, or an authorized representative of such Secretary, determines that any person is in violation of any environmental protection requirement under title III or any regulation issued by the Secretaries to implement this Act, such Secretary or authorized representative shall issue to such person a notice of violation describing the violation and the corrective measures to be taken. The Secretary concerned, or the authorized representative of such Secretary, shall provide such person with a period of time not to exceed 30 days to abate the violation. Such period of time may be extended by the Secretary concerned upon a showing of good cause by such person. If, upon the expiration of time provided for such abatement, the Secretary concerned, or the authorized representative of such Secretary, finds that the violation has not been abated he or she shall immediately order a cessation of all mineral activities or the portion thereof relevant to the violation.

(2) If the Secretary concerned, or the authorized representative of the Secretary concerned, determines that any condition or practice exists, or that any person is in violation of any requirement under a permit approved under this Act, and such condition, practice or violation is causing, or can reasonably be expected to cause—

(A) an imminent danger to the health or safety of the public; or

(B) significant, imminent environmental harm to land, air, water, or fish or wildlife resources; such Secretary or authorized representative shall immediately order a cessation of mineral activities or the portion thereof relevant to the condition, practice, or violation.

(3)(A) A cessation order pursuant to paragraphs (1) or (2) shall remain in effect until such Secretary, or authorized representative, determines that the condition, practice, or violation has been abated, or until modified, vacated or terminated by the Secretary or authorized representative. In any such order, the Secretary or authorized representative shall determine the steps necessary to abate the violation in the most expeditious manner possible and shall include the necessary measures in the order. The Secretary concerned shall require appropriate financial assurances to ensure that the abatement obligations are met.